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October 22, 1996

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Federal Communications Commission
Office of Secretary

Michele Farquhar, Esquire
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

Re: Clarification of FCC's Microwave Relocation Rules
WT Docket No. 95-157
Ex Parte Presentation

Dear Ms. Farquhar:

Devon Mobile Communications, L.P. ("Devon"), by its attorneys, hereby requests that the Wireless Telecommunications Bureau (the "Bureau") clarify its procedure for relocating incumbent microwave operators from the 2 GHz frequency band. Specifically, Devon requests that the Bureau confirm that non-sensitive, non-confidential information contained in existing relocation agreements should be made available to C Block winners, upon reasonable request, by existing A and B Block PCS licensees, or by the clearinghouses designated by the FCC to coordinate microwave relocations. This request for clarification is consistent with the position taken by other C Block winners planning to deploy Personal Communications Services ("PCS") in the near term.^{1/}

Devon was the high bidder on twelve PCS licenses in the C Block auction and is an active participant in the ongoing D, E and F Block auctions. Having already been found qualified by the FCC to hold licenses in the C Block, and having submitted the required down payment on September 24, 1996, Devon shortly will receive its broadband licenses and will begin constructing its PCS network. As consistently recognized by the FCC, however, a critical aspect of this build-out will be the efficient relocation of incumbent microwave operators from

^{1/} See Letter to Michele Farquhar, Chief, Wireless Telecommunications Bureau, Federal Communications Commission from Aradigm Communications, Kansas Personal Communication Services, Ltd., Nextwave Telecom Inc., Onque Communications, Inc., Polycell Communications, Inc. and RLV-PCS I Partnership (filed October 14, 1996) (see attached).

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the 2 GHz band. Indeed, the Commission already has initiated the voluntary negotiation period applicable to C Block licenses to encourage the negotiation of band-clearing agreements.^{2/}

In direct response to the FCC's lead, many C Block winners have begun the process of relocating microwave incumbents operating within their targeted Basic Trading Areas ("BTAs"). Their efforts, however, have been hindered by the lack of information concerning the activities and successes of existing A and B licensees who have had at least 18 months to negotiate agreements with existing microwave incumbents. Indeed, C Block winners have been unable to obtain basic information about the existence of consummated agreements to facilitate their own negotiations and relocation efforts. A clarification of Sections 24.245 and 24.249 of the Commission's rules, however, will address this problem and lead to a more efficient microwave relocation process.

Under the FCC's microwave relocation rules, PCS licensees are requested to notify the relocation clearinghouse prior to initiating service to determine their cost-sharing obligations.^{3/} Following notification, and after the clearinghouse analyzes the potential for interference with microwave links already subject to relocation agreements entered into between carriers, the PCS licensees will be apprised of their required contributions. Until that time, however, C Block licensees are unable to obtain information about agreements entered into with the A and B Block licensees operating in their targeted service areas, notwithstanding the fact that the clearinghouses are in possession of documentation regarding existing microwave relocation agreements pursuant to Section 24.245 of the Commission's Rules. Moreover, to the extent PCS licensees have decided not to seek reimbursement for the costs of relocation, the rule has been interpreted not to require a filing with the relocation clearinghouses. The result is an inability by C Block winners to: (1) identify microwave licensees that still must be relocated; (2) plan negotiations in the near term; and (3) allocate their limited financial and human resources efficiently. Moreover, the delay is exacerbated by the fact that microwave licensees are not required to negotiate with any C Block winner during the voluntary period, which ends May 22, 1998.

Accordingly, Devon respectfully requests that the Bureau confirm that non-confidential information regarding a specific relocation agreement should be made available to C Block winners by A and B Block licensees or the relocation clearinghouses once documentation of an agreement is filed pursuant to Section 24.245. Specifically, the information to be made available should include, at a minimum, the name of the parties, the identification of microwave licenses

^{2/} See *Public Notice*, "Wireless Telecommunications Bureau Announces Commencement of the Voluntary Negotiation Period for 2 GHz Microwave Incumbents Operating in the Broadband PCS "C" Block," (released May 24, 1996).

^{3/} See 47 C.F.R. § 24.249 (1996).

Michele Farquhar, Esquire

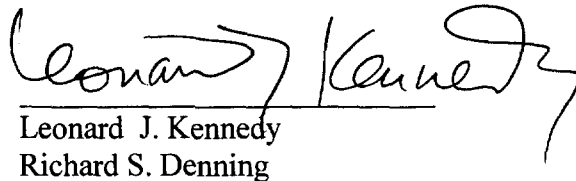
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(links) covered by the agreement and time period established for decommission of each specific microwave facility. The Bureau also should confirm that PCS licensees are required to file documentation regarding existing relocation agreements regardless of the PCS licensees' intent to pursue cost-sharing from other PCS licensees. The immediate availability of this information will permit C Block licensees to pursue their relocation efforts in a focused and efficient manner. It also will distinguish the voluntary and involuntary negotiation processes from the cost-sharing procedures established by the FCC in May of 1996 by permitting and encouraging information-sharing apart from a PCS carrier's reimbursement rights.

Respectfully submitted,

DEVON MOBILE COMMUNICATIONS, L.P.



Leonard J. Kennedy
Richard S. Denning

Its Attorneys

Enclosure

October 14, 1996

Michele Farguhar
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, DC 20554

Re: WT Docket No 95-157

Is the Matter of Amendment of the Commission's Rules Regarding a Plan for Sharing
the Costs of Microwave Relocation

Dear Ms. Farguhar:

The Commission and the Wireless Telecommunications Bureau have expended considerable effort to remove barriers to small and entrepreneurial companies' participation in the wireless industry. We greatly appreciate those efforts and are here to tell you that C block winners, including the companies that have signed this letter, are serious about building out their networks. It is with the intent of bringing service rapidly to the American public that we call to your attention an ambiguity in FCC microwave relocation rules that could undermine these efforts.

To ensure rapid PCS service to the public, you have crafted microwave relocation rules that are designed to be responsive to the concerns of PCS licensees and microwave incumbents in the 2 GHz band. As you know, as part of the process outlined in its rules, the Commission announced in May that C block winning bidders could begin the process of microwave relocation.¹ Many C blocks winners have begun the process of clearing their frequencies of microwave incumbents. However, in the process, and as a result of C block bidders beginning the process of microwave relocation more than a year behind the A and B block licensees, we have identified areas of the Commission's rules that remain ambiguous and are potentially harmful to all later PCS entrants. The C block companies that have signed this letter join in asking the Bureau to clarify the Commission's rules, particularly with regard to required information sharing.

The Commission's rules create an incentive for PCS entrants to relocate while microwave systems (including links outside a PCS entrant's band) by enabling a relocant to share the costs of relocation with other PCS companies that benefit from the relocation.

¹ *Wireless Telecommunications Bureau Announces Commencement of the Voluntary Negotiation Period for 2 GHz Microwave Incumbent Operating in the Broadband PCS "C" Block, Public Notice (rel. May 24, 1996).*

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Unfortunately, there is a significant ambiguity in the rules that is a source of potential abuse. We are asking that the Bureau clarify this ambiguity as soon as possible.

As presently written, the rules inherently imply -- but do not expressly require -- that a PCS relocater must inform other PCS entrants of its relocation agreements when such agreements clearly affect incumbent operations in those other PCS entrants' bands. We are concerned that if such information can be withheld, the negotiations process for those other PCS entrants will be distorted substantially. Particularly during the voluntary negotiations period, when incumbents are not required to negotiate in good faith, those late entrants would have no means of identifying who they need to negotiate with, much less the reasonable parameters of such negotiations. Instead, they will be forced to expend valuable time and funds pursuing negotiations with everyone, even incumbents that already have agreed to relocate. Furthermore, even if the identity of the incumbents that have signed agreements is known, it is critical to our network buildout that we know the decommission dates of specific microwave links. This irrational state of affairs could extend indefinitely if relocation agreements are allowed to contain overly restrictive nondisclosure provisions.

In order to avert this needless and wasteful expense, and to keep the relocation negotiations process from becoming a shell game, the Commission must explicitly require information about relocation agreements to be made available to any affected PCS company upon reasonable request. One way to accomplish this is to clarify that Section 24.245 of the Commission's rules:

- requires all PCS relocators to submit documentation of each relocation agreement to both Commission-selected cost-sharing clearinghouses within ten days of the signing of such agreement -- regardless of the relocators' plans to pursue cost-sharing at a later time;
- authorizes other affected PCS licensees to access such information, in particular the decommission dates on specific microwave links, subject to appropriate rules concerning its confidential treatment; and
- bans provisions in relocation contracts that would restrict the availability of such information to affected PCS licensees.

We believe that such a clarification is a natural outgrowth of the Commission's decisions and discussions in the April 30, 1996 Report and Order and Further Notice of Proposed Rule Making,⁷ and that the Bureau is well within its authority to clarify the Commission's rules.

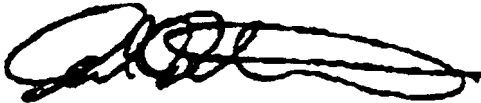
⁷ *Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, First Report and Order and Further Notice of Proposed Rule Making (rel. Apr. 30, 1996).

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We appreciate that there are considerable demands on your time, but must stress that this issue is critical to us. We strongly encourage you to act quickly on clarifying that the information described above should be shared. Such clarification is necessary to end the uncertainty and to ensure that C block licensees can begin offering PCS service to the public as soon as possible.

Sincerely,

ARADIGM COMMUNICATIONS



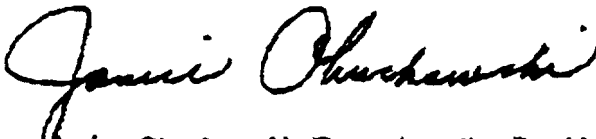
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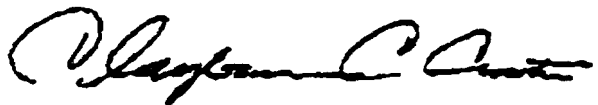
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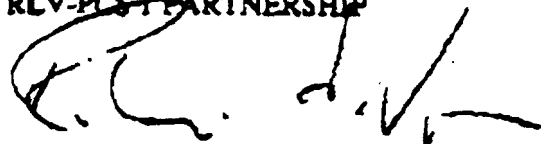
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